

PUBLIC TESTIMONY BEFORE THE NOSB,
La Crosse, WI

6/7/01

Dear NOSB

Thank you for the opportunity to provide public comment for the record. We continue to be staunch supporters of the very vital roles of the NOSB. Your challenge is to rise to the occasion and meet these multiple and simultaneous roles.

You must respond to USDA's needs for timely advice on implementing the rule, you must continue to respond to official materials review, and you must continue to flesh-out those historical practices not yet included in the final rule. However, you must also serve as a national forum for consensus building and problem-solving which is responsive to an engaged and informed public.

1. Very careful and deliberate pains were taken and fought for to ensure that the NOSB was not just an "old style" advisory board but one which set the bar for being interactive, transparent and responsive to the critical issues. We strongly urge the Board to reclaim this legacy and we formally petition the board to restore a very clear and consistent process for public engagement. You are also meant to play an advocacy role to ensure that this process is fair, consistent and that does not alienate or drive-out the traditional clientele, while being open to concerns of new constituencies. Your priorities and USDA's priorities and those of the clients must mesh in very deliberate and productive way. There is much willingness on the part of the concerned public to participate. This can actually help speed resolution of complex issues and provide USDA will advice that will not come home to roost, so to speak!
2. Isolation is dangerous in a time of major transition.
3. The website is not timely nor interactive enough to provide for the kind of feedback and dialogue that is needed. We urge the board to immediately re-enact written and email notice of your priorities, timelines, and of the opportunity to provide comments.

4. There is a very urgent need for the very close scrutiny and “hands-on” nurturing by the board during this period of implementation. None of us, including USDA, has ever attempted such a massive undertaking. There can be many unintended causalities. It is your job to help this transition work.
5. I am very concerned that confusion, fear and withdrawal are now growing by the day. The certifiers need urgent and consistent clarifications regarding interpretations of the rule. You should play a proactive and oversight role in helping to make sure that this happens.
6. This period of implementation was meant to be a time of transition; a time for farmers and certifiers to make the necessary adjustments to meet compliance. A period of phasing-in and phasing out. We must not lose this component. We need a very orderly transition.

We stay ready to help and await your formal response to our request regarding – the rules of engagement, timely notice and access.

Regarding agenda items for this meeting.

1. We strongly urge the Board to act on the livestock committee’s recommendations to clarify pasture – farmers and certifiers urgently need this guidance. We generally support the language proposed with the amendments of changing the word “could” to “would” and additionally urge the board to provide some examples to help clarify what kinds of circumstances that are envisioned for temporary exemptions from this requirement.
2. Regarding Synthetic methionine; we opposed its allowance because – we must take the long view and encourage the expansion of new market and crop opportunities for organic farmers to meet the growing demands for organic ingredients. This disallowance will stimulate and send market signals, which can provide for needed much needed longer organic cash crop rotations. This material is not compatible with a system of sustainable agriculture. It’s a holdover from the confinement model. The board must take serious the highly competent and independent Tap reviews provided and the adhere to the criterion provided by the law. We urge you to do the right thing for the long view.

However, we also strongly urge a phasing –out of this product so as not to hurt current organic farmers as they develop suitable natural and organic alternatives.

Finally, we are asking for your help and are submitting for the record our letter urgently requesting USDA to clarify – the conflict of interest language in the final rule so as to not destroy farmer-based certification agencies, which are the backbone of this industry.

The Board must remain a protector of organic integrity and this art of the long view – remembering that organic is the marriage of standards and values. Thank you for this opportunity.

Michael Sligh, RAFI

Marti Mellon, UCS

Andy Kimbrell, ICTA

Nancy Taylor, founding member of the NOSB

Liz Henderson, Peaceworks Farms

Roger Blobaum and Asso.

NATIONAL CAMPAIGN FOR SUSTAINABLE AGRICULTURE

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May 31, 2001

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National Organic Program, USDA
P.O. Box 96456, Room 2945
South Building
Washington, DC 20090

RE: NOP Final Rule Sections 205.501(a) (11)(i) and 205.501(a)(11)(iii)

Dear Mr. Jones:

We the undersigned organizations want the NOP final rule improved. Following are specific corrections to Sections 205.501(a) (11)(i) and 205.501(a)(11)(iii), along with detailed rationale as to why these corrections are necessary.

Section 205.501(a) (11)(i)

Specifically Section 205.501(a) (11)(i) should be corrected as follows:

Prevent conflicts of interest by:

Ensuring that certification decisions are made by parties who have no commercial interests or conflict of interest in the outcome of the decision, including an immediate family interest or the provision of consulting services, within the 12-month period prior to application for certification:

The ISO-65 Guide (the internationally recognized guide for the operation of product certification programs) handles this issue in section 4.2. Section 4.2(e) addresses the issue of impartiality and broad-based participation in requiring that the certification body shall:

"have a documented structure which safeguards impartiality including provisions to ensure the impartiality of the operations of the certification body; this structure shall enable the participation of all parties significantly concerned in the development of policies and principles regarding the content and functioning of the certification system;"

Section 4.2(n) provides the concept of managing conflict of interest by providing a "balance of interest" in the decision making body:

"In particular the certification body shall: (n) have formal rules and structures for the appointment and operation of any committees which are involved in the certification process; such committees shall be free from any commercial, financial and other

pressures that might influence decisions; a structure where members are chosen to provide a balance of interests where no single interest predominates will be deemed to satisfy this provision;" [4.2(n)]

The current language is outside the requirements of ISO Guide 65, which, in Section 5.2.2, states that personnel involved in the certification process must "comply with the rules defined by the certification body, including those relating to confidentiality and independence from commercial and other interest, and declare any prior and/or present association on their own part, or on the part of their employer," with the operation seeking certification. The agent may still certify them, however.

While it is critical that a firewall be maintained between certification decisions and all parties with commercial interests in the outcome of the decisions, the existing language goes too far and places an undue burden on farmer-run and membership-based certifying agents and the operators they serve. If implemented as written, it would mean the end to regional certifying agents that rely on the involvement of their members for their existence. Of the 6,888 certified parties identified in the 1999 US Organic Certifiers Directory, published by the Organic Farming Research Foundation, it is estimated that 5,251 or 76% of certified operations in the US are currently served by agencies that would not meet this requirement. A successful implementation of the proposed organic rule will not be possible if these experienced agencies, including those that are currently internationally recognized as ISO-65 compliant and/or IFOAM accredited, are no longer able to operate.

The exclusion of the ability to certify "responsibly connected" parties does not acknowledge the indirect role most board of directors now play in the functioning of membership based certification agencies. Generally, boards of directors provide organizational oversight, strategic planning, and policy direction for their agencies. Either staff or volunteer review committees generally make actual certification decisions. Board members, although ultimately responsible for the activities of the organization, are not involved in direct supervision of personnel (other than an executive director) or volunteers. Certification agents should be able to demonstrate their ability to segregate these functions clearly in their application for accreditation. We support the addition of the requirement of a disclosure statement for responsibly connected parties in section 205.501(a)(11)(v). This requirement, along with clear disclosure of personnel policies, can address the concerns expressed by NOP that "the certifying agents control over the employment of an agent's employee makes it unreasonable to expect an employee of a certifying agent to impartially carry out the employee's duties when the certifying agent or a responsibly connected party of such agent has an interest in the applicant." (65 FR 13590)

Section 205.501(a)(11)(i) should be changed to reflect the desired outcome, without prescribing organizational structure. The goal is to prevent parties who have, or have had, commercial interests in the outcome of a particular decision, from making a certification decision. Currently there are 9 programs that have undergone ISO 65 compliance audits offered by USDA to ensure foreign markets that certification programs are being operated in an internationally accepted manner. The NOP has stated that the accreditation of certification programs under the NOP would be based on ISO 65 compliance to ensure international trade continues. Out of the nine ISO 65 compliant programs currently listed on the USDA website, seven of these would not meet the excessive COI legal organizational structure that the rule would necessitate without

restructuring, and then farmers would not be able to serve on the Boards of their own farmer organizations. The two that would be able to comply are a State Department of Ag and a private for profit business whose services are out of financial reach for all but a few farms.

The programs that have undergone ISO 65 audits have safeguards in place that have been verified through compliance audits. The role of accreditation is, through reviews of files, interviews with staff, key personnel, certification decision makers, inspectors, and certified entities to verify that a certification agent is operating in accordance with its policies and is free from conflict of interest. The ISO 65 audits have accomplished this to date and with the addition of possible fines and revocation of accreditation for violation of a Federal law the concerns can be addressed without destroying farmer run organizations. This after all was the Congressional intent in the passage of the OFPA.

Section 205.501(a)(11)(iii)

Rewrite Section 205.501(a)(11)(iii) as follows:

(iii) Not permitting any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected: *Except*, That, a certifying agent that is a not-for-profit organization with an Internal Revenue Code tax exemption, or in the case of a foreign certifying agent a comparable recognition of not-for-profit status from its government, may accept voluntary labor from certified operations; for all of its activities, and may accept gifts and contributions to its programs not directly related to its certification activities;

Rationale: Section 205.501(a)(11)(iii) would prevent certifying agents which are organized as legal not-for-profit organizations from accepting charitable donations for the portions of their programs which are not directly related to certification. This section should be changed to prevent gifts and contributions only to the certification program: for example, some non-profit membership-based organizations are active in collecting donations for charitable food distribution, research or educational activities. Again accreditation and spot checks, if needed, should ensure that certification programs are operating in the correct manner. A tax deductible donation in support of a research, educational, or other charitable program or donating food for an educational conference does not change whether an applicant meets certification standards which are verified through the certification program of the same organization.

State Departments of Agriculture operate both marketing and regulatory compliance programs. To treat non-profits different than states does not seem fair as long as there are separate program safeguards.

The original intent of OFPA was not for tax-exempt charitable or educational organizations to stop operating their important programs. OFPA never intended for existing farmer based organizations to either stop operating certification programs or to stop having farmers on the Boards of Directors. The NOSB has discussed this very issue more than once, heard public testimony and developed recommendations. The NOSB recommendations in this area were ignored by the NOP. Farmer based organizations as well as all accredited certification agents should make sure that the decisions concerning certification are made free from conflict of

interest. The accreditation process and reviews of certifier activities should verify, through a review of files, policies, interviews with staff, certified entities, that conflict of interest issues are being adequately maintained. The process does not need to mandate the end of farmers serving on the Boards of farmer organizations which in many cases are involved in activities outside the realm of certification including charitable, educational, and research programs. **Organic farmers are at the very heart of the NOP and as such it is an insult to them to remove them from Boards of the very organizations that built the organic industry and developed organic certification.** We want the NOSB to reaffirm its recommendation, which reflected the above, and the USDA to fix the rule. The Secretary of Agriculture stated when the final rule was released that it was not a perfect rule as they wanted to get a final rule out after 10 years, but that USDA was open to improving and making it better. We the undersigned hope and expect that to be the case now.

Sincerely,

Rural Advancement Foundation International, USA, Michael Sligh
Organic Watch, Roger Blobaum
Center for Food Safety, Joe Mendelson
Organic Farming Research Foundation, Mark Lipson
California Certified Organic Farmers (CCOF)
Demeter Association, Anne Mendenhall
Florida Certified Organic Growers and Consumers, Marty Mesh
Georgia Organics
Global Organic Alliance Inc.
Hawaiian Organic Farming Association
International Federation of Organic Agriculture Movements (IFOAM), Suzanne Vaupel
International Certification Services, Inc. [Farm Verified Organic], Annie Kirschenmann
Maine Organic Farmers and Gardeners Association, Russell Libby
Massachusetts Independent Certification, Inc., Don Franczyk
Midwest Organic and Sustainable Education Services, MOSES, Faye Jones
Midwest Organic Services Association (MOSA), David Engel
Northeast Organic Farming Association -- Connecticut, Bill Duesing
Northeast Organic Farming Association -- Massachusetts, Julie Rawson
Northeast Organic Farming Association -- New York, Sarah Johnston
Northeast Organic Farming Association -- Rhode Island, Jeanne Chapman
Northeast Organic Farming Association -- Vermont, Enid Wonnacott
Ohio Ecological Food and Farm Association, Sean McGovern
Oregon Tilth Certified Organic, Pete Gonzalves
Organic Certifier's Council of the Organic Trade Association, Marty Mesh, chair
Organic Consumers Association, Ronnie Cummins
Organic Crop Improvement Association (OCIA) International, Diane Bowen
Pennsylvania Certified Organic, Leslie Zuck
Wisconsin Organic Crop Improvement Association (OCIA) #1, David Engel

Cc: National Organic Standards Board